IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 522 OF 2005
IN
SUMMARY SUIT NO. 3714 OF 2004

Laxmidas Narsidas Savla & Anr. ... Plaintiffs.

V/s.

Ravilal Nanji Dedhia. ... Defendant.

Mr. Divyakant Mehta for the Plaintiffs.
None for the Defendant.

CORAM : DR. D.Y. CHANDRACHUD,J.

20TH JUNE 2007.

P.C. :-

. The suit under Order 37 of the Code of Civil Procedure, 1908 is for the recovery for monies lent and advanced. The foundation of the suit is that in consideration of having received an amount of Rs.1.00 lakh, the Defendant executed a receipt dated 10th October 1995 agreeing to repay the amount with interest at the rate of 18% per annum. The last payment of interest in the amount of Rs.4,600/- was made by cheque and it has been averred that the Defendant failed and neglected to pay interest on and from 1st January 2002.

A notice of demand was addressed to the Defendant on 4th July 2002. In a reply dated 11th July 2002, the Defendant stated through his Advocate that a finance broker had arranged for a loan of Rs.1.00 lakh for the Defendant and he used to collect cheques on account of interest as and when due. The Defendant stated that he had not personally met the Plaintiff and was not in a position to admit the facts as pleaded in the notice of demand. The Defendant admitted that the last payment of interest was made on 31st December 2001. In the concluding part of the letter, the Defendant agreed that the claim of the Plaintiff would be immediately settled provided that the Defendant was satisfied that the Plaintiffs was the right person to receive the amount, which could only be done in the presence of the broker.

2. In reply to the Summons for Judgment, the Defendant has filed an affidavit in which the first defence that has taken is that the suit is barred by limitation inasmuch as the suit was instituted in November 2004, on the basis of the receipt of 10th December 1995. There is no merit in the defence. The Plaintiff has averred that the Defendant failed to pay

interest with effect from 1st January 2002. In the reply dated 11th July 2002 addressed by the Defendant's Advocate it has been stated that the last cheque for interest was collected upto 31st December 2001. The Suit was instituted within a period of 3 years thereafter on 22nd November 2004.

3. Apart from the defence of limitation, the Defendant has relied upon the contents of the letter dated 11th July 2002 addressed to the Plaintiff in response to the notice of demand. As already noted earlier, the aforesaid reply does not deny the transaction under which the loan was advanced to the Defendant in the amount of Rs.1.00 lakh and of the payment of interest from time to time. The execution of the receipt is not denied. In fact the Defendant has only stated that the claim of the Plaintiff would be settled provided the Defendant was satisfied, in the presence of the broker that the Plaintiff was the right person to receive the amount. The entitlement of the Plaintiff is borne out by the receipt executed by the Defendant on 10th October 1995 confirming the liability due and outstanding to the Plaintiff.

4. The Advocate for the Defendant has not appeared at the hearing of the Summons for Judgment. However, since there is a reply on the record the entire reply has been read out in Court and the defence has been duly considered hereinabove. The Defendant has absolutely no defence to the Suit.

5. Counsel appearing on behalf of the Plaintiff has tendered the original documents which are taken on record. The claim of the Plaintiff is duly established on the basis of the evidence produced on the record.

6. The Summons for Judgment is accordingly made absolute and the suit shall stand decreed in terms of prayer clauses (a) and (b) with the modification that the Plaintiff would be entitled to interest at the rate of 9% per annum on the principal sum of Rs.1.00 lakh from the date of the institution of the suit until payment or realization.

7. Refund of Court fees if any, as per rules.